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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DIANA VALLARTA and LISA
SALMONS, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

UNITED AIRLINES, INC.,
Defendant.

Case No. 4:19-cv-5895-HSG

**DEFENDANT UNITED AIRLINES,
INC.'S NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFFS'
CLASS ACTION COMPLAINT, AND
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES**

Judge: Hon. Haywood S. Gilliam, Jr.
Courtroom: 2, 4th Floor
Hearing Date: January 16, 2020
Hearing Time: 2:00 p.m.

Complaint Filed: September 20, 2019

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PLEASE TAKE NOTICE THAT on January 16, 2020, at 2:00 p.m. in Courtroom 2 of the above-entitled Court, Defendant United Airlines, Inc. (“United”) will and hereby does move this Court to dismiss the Class Action Complaint of Plaintiffs Diana Vallarta and Lisa Salmons pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

As set forth below, the Class Action Complaint should be dismissed in its entirety pursuant to Rule 12(b)(6) because it fails to state a claim upon which relief may be granted with respect to either Plaintiff. In addition, this Court does not have jurisdiction over the claims asserted against United—a Delaware corporation with its principal place of business in Illinois—by Salmons, a Connecticut resident, or by other non-California resident members of the putative classes. Those claims should accordingly be dismissed pursuant to Federal Rule 12(b)(2). This Motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, and the pleadings, papers, and records presently on file in this action, as well as such further pleadings, papers and oral argument, if any, as may be properly presented hereafter.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In September 2018 and August 2017, respectively, Plaintiff Diana Vallarta (“Vallarta”) of San Jose, California and Plaintiff Lisa Salmons (“Salmons”) of Stamford, Connecticut (collectively, “Plaintiffs”) purchased trip insurance through Defendant United Airlines, Inc.’s (“United”) website. (Class Action Complaint, Doc. 1 (hereafter, “Compl.”), ¶¶ 3, 4.) According to Plaintiffs’ allegations, after they completed these purchases, United “sent Plaintiffs each an email with their individual purchase summaries and stated that the trip insurance would be billed separately.” (*Id.* ¶ 45.) Plaintiffs do not allege any other facts about their individual purchases of trip insurance.

Notably, Plaintiffs do not assert any objection to the trip insurance policies themselves. They do not allege any failure to receive their policies, that the terms of the policies they received differed in any way from the policies they paid for, or that they were charged an amount different from the premium advertised on United’s website. Nevertheless, Plaintiffs now seek to assert claims against United based on the conclusory allegation that they “would have not purchased the

1 travel insurance and/or would have paid less for travel insurance” if United had disclosed that
2 United allegedly receives a “commission” from the travel insurance carriers when a policy is sold
3 through United’s website. (*Id.* ¶ 41.) Based on this theory, Plaintiff Vallarta purports to assert a
4 claim against United on behalf of a California class for violation of the California Unfair
5 Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. (“UCL”), Plaintiff Salmons purports
6 to assert a claim against United on behalf of a putative Connecticut class for violation of the
7 Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b (“CUTPA”), and both
8 Plaintiffs purport to assert claims on behalf of the asserted California and Connecticut classes, as
9 well as a putative nationwide class, for unjust enrichment, conversion and fraudulent
10 concealment.

11 Plaintiffs’ Class Action Complaint should be dismissed because it fails to state any claim
12 against United with respect to either Plaintiff. Plaintiff Vallarta cannot assert a claim under the
13 UCL because the allegedly prohibited conduct is expressly allowed under California law, her
14 allegations do not satisfy Federal Rule of Civil Procedure 9(b), she does not allege either a
15 misrepresentation or an actionable omission, and she does not allege an actual injury caused by
16 the allegedly unfair practice. Salmons cannot assert a CUTPA claim because she has not pleaded
17 (and cannot plead) a violation of the Connecticut Unfair Insurance Practices Act (“CUIPA”),
18 which is necessary for her to maintain a CUTPA claim relating to an insurance practice. Nor can
19 she cure this deficiency, since the allegedly prohibited conduct is expressly allowed under
20 Connecticut law. Further, Salmons does not plead the threshold requirement of an ascertainable
21 loss due to the alleged unfair conduct.

22 Plaintiffs’ unjust enrichment, conversion, and fraudulent concealment claims are premised
23 on the same allegations as their UCL and CUTPA claims, and therefore should be dismissed with
24 those claims. In addition, these claims fail independently of the defects in Plaintiffs’ UCL and
25 CUTPA claims because they are insufficiently pleaded. Regarding unjust enrichment, California
26 does not recognize a standalone cause of action, warranting immediate dismissal of Vallarta’s
27 claim, and Salmons fails to identify a specific benefit wrongfully obtained and retained by United
28 to her detriment, as required to state an unjust enrichment claim under Connecticut law.

1 Plaintiffs' claims for conversion likewise do not survive, as Plaintiffs allege no specific,
 2 identifiable monies to which they had a right of possession at all times, as required under both
 3 California and Connecticut law. Nor has either Plaintiff stated a claim for fraudulent
 4 concealment. Salmons's claim for fraudulent concealment should be dismissed because
 5 Connecticut does not recognize an independent cause of action for fraudulent concealment, and
 6 Vallarta does not allege that United had any duty to disclose the allegedly concealed information,
 7 as required to state a fraudulent concealment claim under California law.

8 Further, because this Court lacks personal jurisdiction over United with respect to any
 9 claims that do not have a sufficient connection to California, the claims asserted by Salmons, on
 10 behalf of herself and a putative Connecticut class, should be dismissed pursuant to Federal Rule
 11 12(b)(2), and Plaintiffs' allegations of a putative nationwide class should be stricken. *See Bristol-*
 12 *Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773 (2017)
 13 (hereafter, "*Bristol-Myers*").

14 Finally, Plaintiffs' Class Action Complaint should be dismissed in its entirety because all
 15 of Plaintiffs' asserted claims are preempted by the Airline Deregulation Act of 1978, 49 U.S.C. §
 16 40101 et seq. (the "ADA").

17 **COMPLAINT ALLEGATIONS**¹

18 Plaintiff Diana Vallarta is a resident of California, and Plaintiff Lisa Salmons is a resident
 19 of Connecticut. (Compl. ¶¶ 3-4.) The Complaint alleges that on September 28, 2018 and August
 20 7, 2017, respectively, Vallarta and Salmons purchased trip insurance from United's website. (*Id.*;
 21 *see also id.* ¶ 43.) Plaintiffs also allege that "[a]fter completing the purchases, United sent
 22 Plaintiffs each an email with their individual purchase summaries and stated that the trip
 23 insurance would be billed separately." (*Id.* ¶ 45.)

24 Although the Class Action Complaint is rife with inflammatory language and conclusory
 25 assertions, it is entirely bereft of actual *facts* that would allow the Court to conclude that either
 26

27 ¹ United accepts the well-pleaded factual allegations of the Class Action Complaint as true solely
 28 for the purposes of this Motion to Dismiss. *See Outdoor Media Grp., Inc. v. City of Beaumont*,
 506 F.3d 895, 900 (9th Cir. 2007).

1 Plaintiff has a plausible claim for relief against United. Plaintiffs do not allege any specific facts
 2 about their individual purchases of travel insurance through United’s website other than the dates
 3 of those purchases. Instead, the Class Action Complaint purports to describe a generic process
 4 for purchasing travel insurance on United’s website that has no alleged connection to Plaintiffs’
 5 own purchases.²

6 Plaintiffs allege that when purchasing a ticket for air travel through United’s website, “the
 7 customer” is required to make an election regarding the purchase of a travel insurance policy with
 8 a third-party insurance provider. (*Id.* ¶ 19.) Plaintiffs further allege that, after “the customer
 9 selects the desired flight or flights, enters their personal information, and selects their seat, the
 10 customer reaches the ‘Payment’ page.” (*Id.* ¶ 22.) Plaintiffs allege that, prior to October 2017,
 11 the “Payment page” included the option to click “Yes, add protection for [\$X],” followed by (i)
 12 “a quote from Frommer’s noting that ‘[i]t’s wise to always consider a travel protection plan to
 13 cover your trip costs from the unexpected,’” (ii) the “‘Top 4 reasons you need travel insurance,’”
 14 and (iii) “an ‘Important Fact’ noting the high out-of-pocket costs associated with medical
 15 emergency transportation.” (*Id.* ¶ 24.) Those statements were allegedly followed by an option to
 16 click, “No, I will travel without this insurance for my [ticket price] trip.” (*Id.* ¶ 25.) The Payment
 17 Page also allegedly “noted that the policy being provided through United’s website was
 18 underwritten by the Allianz group.” (*Id.* ¶ 26.) If the consumer opted to purchase travel
 19 insurance from Allianz, United “would send the customer a ticket receipt,” which “noted that the
 20 specific amount charged for ‘Travel Insurance’ would be ‘Billed separately by Allianz Global
 21 Assistance.’” (*Id.* ¶ 28.)

22 Plaintiffs also allege that, “[p]ost-October 2017,” the Payment Page includes the sentence,
 23 “Cover your trip with Travel Guard® insurance,” as well as the following language “presenting”
 24 the Travel Guard insurance:

25 _____
 26 ² While Plaintiffs allege that “United markets the third-party travel insurance to its customers in a
 27 uniform fashion—each customer sees the same marketing language when purchasing a ticket”
 28 (Compl. ¶ 21), that conclusion is not supported by any specific allegations and is accordingly not
 entitled to the presumption of truth on a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662,
 681 (2009) (conclusory allegations are not entitled to a presumption of truth); *Helms v. Wells*
Fargo Bank, N.A., 775 F. App’x 895, 896 (9th Cir. 2019) (same).

Don't miss out! Plan includes:

—Flight refund if you can't travel for a covered reason

—Coverage for flight cancellations and missed connections

(*Id.* ¶¶ 29-31.) Plaintiffs allege that the travel insurance offer is accompanied by “yes” or “no” option buttons, that the Payment page states that coverage is offered by Travel Guard Group, Inc., that “[t]here is also a reminder not to ‘ignore the unexpected,’” followed by a list of unexpected events that may prohibit a trip, and that “[o]ver 10 million travelers trust Travel Guard® plans for travel insurance.” (*Id.* ¶¶ 32-34.)

Neither Plaintiff identifies any specific statement that she actually viewed on United's website at the time of purchasing her individual travel insurance policy, much less allege any facts showing that she relied on any of the statements. To the contrary, the Class Action Complaint is markedly vague about the actual travel insurance offer presented to either Vallarta or Salmons, and is silent on their individual motives for purchasing the insurance.

Moreover, Plaintiffs do not allege that *any* of the website statements described in the Class Action Complaint are false, or that the travel insurance policies that customers receive are any different than what is marketed. Instead, the *only* complaint Plaintiffs have about the website is that it allegedly doesn't make clear that United makes money on the sale of travel insurance through its website. (*Id.* ¶¶ 39-40.) Plaintiffs do not allege, however, that this asserted nondisclosure was the reason they purchased the travel insurance, or explain why it would be reasonable for Plaintiffs to expect United to permit free third-party service provider advertising on its website.

ARGUMENT

I. THE COMPLAINT DOES NOT PLEAD ANY COGNIZABLE CLAIMS BY VALLARTA

A. Legal Standard

When considering a Rule 12(b)(6) motion to dismiss, a court must accept “factual matter” in a complaint as true, but need not accept “bald allegations” or “legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 681 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Under that standard, a complaint must be dismissed unless its well-pleaded factual allegations establish “a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. The

1 plausibility standard requires more than “a sheer possibility that a defendant has acted
 2 unlawfully.” *Iqbal*, 556 U.S. at 678. In addition, a complaint asserting claims that sound in
 3 fraud—including a claim for violation of California’s UCL—must comply with the higher
 4 pleading standard of Federal Rule 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir.
 5 2009). Rule 9(b) requires the plaintiff to allege “the who, what, when, where, and how” of the
 6 alleged fraudulent conduct, *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003),
 7 and “set forth an explanation as to why [a] statement or omission complained of was false and
 8 misleading.” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (en banc)
 9 (superseded by statute on other grounds). The allegations of the Class Action Complaint fail to
 10 plead a claim by Vallarta under these standards.

11 **B. Vallarta Fails to State a Claim Under California’s Unfair Competition Law**

12 The UCL prohibits “any unlawful, unfair or fraudulent business act or practice[.]” Bus. &
 13 Prof. Code § 17200 et seq. Because the UCL “is written in the disjunctive, it establishes three
 14 varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.”
 15 *Berryman v. Merit Prop. Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (2007).

16 The “unlawful” prong of the UCL “borrows” violations of other laws and treats them as
 17 unlawful practices actionable under the UCL. *Berryman*, 152 Cal. App. 4th at 1554; *Hadley v.*
 18 *Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1094 (N.D. Cal. 2017); *Resnick v. Hyundai Motor*
 19 *America, Inc.*, No. CV 16-00593-BRO, 2017 WL 1531192, at *18 (C.D. Cal. Apr. 13, 2017). To
 20 plead a claim under the unlawful prong of the UCL, a plaintiff must plead facts plausibly alleging
 21 violation of another statute. *See Hadley*, 243 F. Supp. 3d at 1094 (“If a plaintiff cannot state a
 22 claim under the predicate law,” the UCL claim “also fails”) (internal quotation marks omitted);
 23 *Resnick*, 2017 WL 1531192, at *18 (dismissing “unlawful” UCL claim where plaintiffs “failed to
 24 sufficiently plead a claim for violation of any other statute”).

25 The UCL’s “unfair” prong prohibits a business practice that “violates established public
 26 policy or is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which
 27 outweighs its benefits.” *Hadley*, 243 F. Supp. 3d at 1104. Although the test for what constitutes
 28 an “unfair” business practice under California law is unsettled, courts in this district have held

1 that if the alleged unfair business practice “overlap[s] entirely” with the business practice alleged
 2 to violate one or both of the other prongs of the UCL, the “unfair” claim cannot survive if the
 3 claim with which it overlaps is dismissed. *Id.* at 1104-05.

4 To state a claim under the UCL’s “fraudulent” prong, a plaintiff must show that the
 5 defendant’s alleged conduct is “likely to deceive” a “reasonable consumer.” *Hadley*, 243 F.
 6 Supp. 3d at 1089; *see also Williamson v. Reinalt-Thomas Corp.*, No. 5:11-CV-03548-LHK, 2012
 7 WL 1438812, at *12 (N.D. Cal. Apr. 25, 2012) (same). Notably, an alleged failure to disclose a
 8 fact that one has no affirmative duty to disclose does not support a claim under the “fraud” prong
 9 of the UCL. *Berryman*, 152 Cal. App. 4th at 1557. In addition, to have standing to bring a claim
 10 under any prong of the UCL, a putative class representative such as Vallarta must show that she
 11 “personally lost money or property” because of her own “actual and reasonable reliance on the
 12 allegedly unlawful business practices.” *Williamson*, 2012 WL 1438812, at *10.

13 Finally, “[s]pecific legislation may limit the judiciary’s power to declare [business]
 14 conduct unfair. If the Legislature has permitted certain conduct . . . courts may not override that
 15 determination.” *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 182
 16 (1999); *McCann v. Lucky Money, Inc.*, 129 Cal. App. 4th 1382, 1387 (2005) (same). Thus,
 17 “[w]hen specific legislation provides a ‘safe harbor,’ plaintiffs may not use the general unfair
 18 competition law to assault that harbor.” *Cel-Tech*, 20 Cal. 4th at 182.

19 In this case, Vallarta alleges that United’s “unlawful” and “unfair” business practices
 20 “include violating California Insurance Code § 1631, which prohibits soliciting, negotiating or
 21 effecting contracts of insurance without a license in the State of California.” (Compl. ¶¶ 77-78.)
 22 Vallarta also asserts that United’s “fraudulent acts and practices . . . constitute fraudulent conduct
 23 because they were likely to deceive reasonable consumers,” and that “[r]easonable consumers
 24 purchasing the travel insurance from United were deceived into believing that their payments
 25 were for the premiums of the travel insurance but instead actually include kickbacks to United,
 26 who has no license solicit, negotiate or effect contracts of insurance in the State of California.”
 27 (*Id.* ¶ 79.) Vallarta fails to state a claim under any prong of the UCL because California law
 28 expressly permits the conduct that she alleges. In addition, Vallarta fails to sufficiently allege any

1 fraud, or that she “personally lost money or property” because of her own “actual and reasonable
2 reliance on the allegedly unlawful business practices.” The Class Action Complaint’s Second
3 Cause of Action should therefore be dismissed.

4 **1. The California Insurance Code Provides a “Safe Harbor” That Bars**
5 **Vallarta’s UCL Claim**

6 Vallarta’s UCL claim is premised on the theory that United violates the California
7 Insurance Code by receiving payment from the insurance carriers that it allows to offer travel
8 insurance to United’s customers through United’s website. Indeed, the Class Action Complaint
9 repeatedly (and inaccurately) characterizes these fees as “illegal brokerage fees” or “kickbacks.”
10 (*See, e.g.*, Compl. ¶¶ 1, 13-15, 39, 42, 46-47, 59, 68-69, 79, 94-95, 100, 102, 104-107.) In fact,
11 however, the conduct alleged by Vallarta is expressly *permitted* by California law. Specifically,
12 Section 1754 of the California Insurance Code expressly *allows* a “travel retailer,” such as an
13 airline, to “offer[] and sell[] travel insurance on behalf of a licensed limited lines travel insurance
14 agent,” and “to receive compensation” for such activities. Cal. Ins. Code § 1754. Permissible
15 activities within the scope of this provision include “[o]ffering and disseminating information to a
16 prospective or current policyholder..., including brochures, buyer guides, descriptions of
17 coverage, and price” of travel insurance policies. Cal. Ins. Code § 1753(b)(1). These are
18 precisely the activities in which Vallarta alleges United is engaged. Because California law
19 expressly allows the alleged conduct on which Vallarta premises her UCL claim, that claim
20 cannot proceed, and must be dismissed. *See, e.g., Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d
21 1152, 1165 (9th Cir. 2012) (holding that because defendants’ disclosure of their annual credit
22 card fees in their online application “was permitted by federal law,” it could not “serve as the
23 basis for UCL liability”).

24 **2. Vallarta Fails to Allege Fraudulent Conduct**

25 Vallarta alleges that United’s “fraudulent acts and practices . . . constitute fraudulent
26 conduct because they were likely to deceive reasonable consumers,” and that “[r]easonable
27 consumers purchasing the travel insurance from United were deceived into believing that their
28 payments were for the premiums of the travel insurance but instead actually include kickbacks to

United, who has no license solicit, negotiate or effect contracts of insurance in the State of California.” (Compl. ¶ 79.) Even putting aside the “safe harbor” that bars Vallarta’s UCL claim, this vague and conclusory allegation is wholly insufficient to state a claim under the UCL’s “fraud” prong. Vallarta fails to specifically allege “the who, what, when, where, and how” of the alleged fraudulent conduct, *Vess*, 317 F.3d at 1106, or to “set forth an explanation as to why [a] statement or omission complained of was false and misleading,” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d at 1548, as required by Rule 9(b). Vallarta does not identify the “fraudulent acts and practices” to which she refers, much less explain how consumers allegedly were “deceived” by those unspecified “fraudulent acts and practices.” In fact, as previously noted, Vallarta does not allege that any statement on United’s website was false. Accurate, truthful statements are not actionable. *See, e.g., Stuart v. Cadbury Adams USA, LLC*, 458 F. App’x 689, 691 (9th Cir. 2011) (affirming dismissal with prejudice of UCL claims based on accurate statements and omissions not likely to deceive reasonable consumers).

To the extent Vallarta seeks to premise her claim on United’s nondisclosure of its alleged receipt of compensation in connection with the marketing of trip insurance on its website, the alleged conduct is insufficient as a matter of law to support a UCL fraud claim. A failure to disclose is not actionable under the UCL unless there is an affirmative duty to disclose. *Berryman*, 152 Cal. App. 4th at 1557; *Buller v. Sutter Health*, 160 Cal. App. 4th 981, 987 (2008). Vallarta has not alleged any basis upon which to impose such a duty on United. In addition, courts have found no deception as a matter of law, and dismissed with prejudice, UCL claims based on a defendant’s alleged failure to disclose a profit or fee that is included within the purchase price the plaintiff agreed to pay. *See, e.g., Williamson*, 2012 WL 1438812, at *10 (no deception “where Plaintiff paid the precise amount the Defendant’s clerk quoted”). For these reasons as well, the Class Action Complaint fails to state a claim under the “fraudulent” prong of the UCL.

3. Vallarta Fails to Allege An Actual Injury Caused by the Alleged Unfair or Deceptive Practices

To have standing to bring a claim under the UCL, a plaintiff purporting to represent a

1 putative class must show that she personally lost money or property because of her own “actual
 2 and reasonable reliance on the allegedly unlawful business practices.” *Id.* at *10. Vallarta makes
 3 wholly conclusory allegations that “[h]ad United disclosed that the price of the travel-insurance
 4 product on United’s website incorporates an illegal commission paid to United,” she “would have
 5 not purchased the travel insurance and/or would have paid less for travel insurance.” (Compl. ¶
 6 41.) However, she alleges no facts to show either that the Travel Guard Group would have sold
 7 her insurance policy for less, or that she could have obtained a comparable policy from another
 8 company for less. Conclusory allegations such as these, without facts plausibly showing that
 9 comparable coverage was available at a lower premium, fail to plead an actionable loss. *See*
 10 *Kauai Scuba Ctr., Inc. v. PADI Americas, Inc.*, 524 F. App’x 344, 346 (9th Cir. 2013); *Peterson*
 11 *v. Cellco P’ship*, 164 Cal. App. 4th 1583, 1591 (2008) (plaintiffs who challenged sales
 12 commissions on insurance policies but did not allege that “they could have bought the same
 13 insurance for a lower price either directly from the insurer or from a licensed agent” could not
 14 “show[] they suffered actual economic injury”).

15 In the *Williamson* case, for example, the plaintiff sought to assert a UCL claim arising out
 16 of his purchase of a set of tires from defendants’ retail store. 2012 WL 1438812, at *1. The
 17 gravamen of plaintiff’s complaint was that he was charged an undisclosed service fee to dispose
 18 of his old tires after defendants installed the newly purchased tires on his car. *Id.* In support of
 19 his position that he lost money because of his actual and reasonable reliance on the nondisclosure,
 20 plaintiff alleged “that he could have purchased tires from a competitor at a lower price or he could
 21 have avoided the fee by disposing of the tires himself, and that therefore Defendants’ scheme
 22 ‘caused Williamson to pay an increased sum about that which he would have actually paid.’” *Id.*
 23 at *8. The court found that these “hypothetical allegations . . . do not establish that Plaintiff has
 24 properly pled that he actually relied on Defendants’ alleged omission of the tire disposal fee.” *Id.*
 25 As the court there explained, “[t]hat Plaintiff *could have* purchased his tires from a competitor or
 26 *could have* recycled the tires himself does not establish he *actually relied* on the alleged omission
 27 when deciding where to purchase his tires.” *Id.* Vallarta’s allegations are similarly hypothetical
 28 and conclusory.

Moreover, even assuming Vallarta's conclusory allegation that she would not have purchased the travel insurance had she known about United's compensation were sufficient to plead a loss, her allegations do not establish that the alleged statements or omissions by United were the "immediate cause" of her alleged loss. Vallarta agreed to buy the specific insurance at a specific price, and thus relied on the quality and cost of the insurance when making her purchase, not on what other costs might allegedly be included within that price. Again, the *Williamson* case is squarely on point. In holding that Williamson's factual allegations "do not support a plausible inference that the alleged omission was an 'immediate cause' prompting Plaintiff to purchase and install new tires at Defendants' establishment, or that Plaintiff paid more than he was willing to pay," the court noted that that "[t]he parties agreed prior to the tire installation that Plaintiff would pay \$216.54 for the new tires and to have the tires installed on the car. That is the amount that Plaintiff actually paid. The terms the Plaintiff relied on were price and quality, not on a tire disposal fee that was subsumed into the overall price." *Id.*

Likewise here, Vallarta could have chosen not to purchase travel insurance at all. Instead, she decided, knowing both the terms of the offered policy and the premium price, that the benefits were worth the price. There is nothing unfair about that. *See Warner v. Tinder Inc.*, 105 F. Supp. 3d 1083, 1094 (C.D. Cal. 2015) (holding "that being induced to purchase a product ... is not loss of money or property [under the UCL] as long as one still receives the benefit of the bargain.") (citation omitted). For this reason as well, Vallarta's UCL claim must be dismissed.

C. Vallarta Fails to State a Claim for Unjust Enrichment

Under California law, a standalone cause of action for unjust enrichment is not cognizable, but "a court may construe the cause of action as a quasi-contract claim seeking restitution" as a theory of recovery on other recognized causes of action. *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 754, 762 (9th Cir. 2015); *see also Zuehlsdorf v. FCA US LLC*, No. 18-1877-JGB(KKx), 2019 WL 2098352, at *12 (C.D. Cal. Apr. 30, 2019) ("Unjust enrichment is not an independent cause of action[.]"); *Sutra Beauty, Inc. v. Duran*, No. 2:18-cv-03768-ODW(SSx), 2019 WL 688201, at *3 (C.D. Cal. Feb. 15, 2019) ("Generally, California law does not permit a standalone cause of action for unjust enrichment."). Here, Vallarta has not

1 plausibly alleged any predicate claims on which to base an unjust enrichment theory. As set forth
 2 above, the Class Action Complaint does not state a claim under the UCL, and all of her purported
 3 common law claims likewise fail (*see* Sections I.D and I.E, *infra*). As a result, Vallarta's unjust
 4 enrichment claim fails as a matter of law, and must be dismissed. *See Girard v. Toyota Motor*
 5 *Sales, U.S.A., Inc.*, 316 F. App'x 561, 563 (9th Cir. 2008) ("Girard's unjust enrichment claim also
 6 fails since Toyota's non-deceptive advertising does not entitle him to restitutionary relief.");
 7 *Berryman*, 152 Cal. App. 4th at 1557 (finding unjust enrichment claims based on the same facts
 8 failing to state an UCL claim must fail).

9 **D. Vallarta Fails to State a Claim for Conversion**

10 Conversion is "the wrongful exercise of dominion over the property of another."
 11 *Williamson*, 2012 WL 1438812, at *4. To establish a claim for conversion, a plaintiff must
 12 establish: (1) the plaintiff's ownership or right to possession of the property at the time of
 13 conversion; (2) the defendant's conversion by a wrongful act or disposition of property rights;
 14 and (3) damages. *Id.* Money "cannot be the subject of an action for conversion unless a specific
 15 sum capable of identification is involved." *Id.* "California cases permitting an action for
 16 conversion of money typically involve those who have misappropriated, commingled, or
 17 misapplied specific funds held for the benefit of others." *Id.* (internal quotation marks omitted).
 18 Thus, a claim for conversion may be stated when there is a special relationship between the
 19 parties obligating the defendant to retain or apply funds on the plaintiff's behalf. *Id.*

20 This case plainly presents no such circumstance. The basis of Vallarta's claim is an arms-
 21 length commercial transaction, which does not give rise to a "special relationship" that would
 22 support a conversion claim. *See id.* at *5. Furthermore, Vallarta cannot establish that she had
 23 "ownership or right to possession of the property at the time of conversion." *Id.* at *4; *see also*
 24 *Brighton Trustees v. Transamerica Life Ins. Co.*, No. 2:19-cv-04210-CAS(GJSx), 2019 WL
 25 578495, at *10 (C.D. Cal. Nov. 4, 2019) (citing *Bastanchury v. Times-Mirror Co.*, 68 Cal. App.
 26 2d 217, 236 (1945)). According to the Class Action Complaint, if a passenger chooses to
 27 purchase coverage, they pay the agreed premium for that coverage to the insurance carrier (not
 28 United). (*See* Compl. ¶ 14.) At that point in the transaction, title to those funds passes to the

insurance carrier. *See Williamson*, 2012 WL 1438812, at *5 (noting that once plaintiff paid the agreed price for the tires, title to those funds passed to defendants). As a result, Vallarta cannot state a conversion claim with respect to those funds, and her conversion claim should be dismissed.

E. Vallarta Fails to State a Claim for Fraudulent Concealment

Vallarta bases her fraudulent concealment claim on the alleged omission from United's website of information about compensation received by United from her travel insurance policy purchase. (Compl. ¶ 100.) For an omission to be actionable as fraudulent concealment under California law, (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. *Tenet Healthsystem Desert, Inc. v. Blue Cross of Cal.*, 245 Cal. App. 4th 821, 844 (2016); *Baird v. Samsung Elecs. Am., Inc.*, No. C 17-06407 JSW, 2018 WL 4191542, at *7 (N.D. Cal. July 20, 2018) (same). Plaintiff must plead these elements with the specificity required by Rule 9(b). *See Ahern v. Apple Inc.*, No. 18-CV-07196-LHK, 2019 WL 5102621, at *14 (N.D. Cal. Oct. 11, 2019).

Vallarta has not pleaded facts showing any of the elements of this claim are met here. In particular, as previously discussed, Vallarta has not alleged any basis to find that United had a duty to disclose the alleged (and unsurprising) fact that it receives compensation from third parties who market products on its website. *See supra* at 9. Nor has Vallarta adequately alleged that she sustained any damages as a result of the alleged concealment of that fact. *Supra* at 9-11. Vallarta's claim for fraudulent concealment must be dismissed.

II. THIS COURT LACKS JURISDICTION OVER THE CLAIMS ASSERTED BY SALMONS AND THE PUTATIVE CONNECTICUT CLASS

Plaintiff Salmons is a Connecticut resident who does not allege any connection between her purchase of travel insurance from United's website and this forum; indeed, Salmons

1 apparently purchased her travel insurance policy in Connecticut, because she seeks to represent a
 2 putative class of “persons who purchased a travel insurance policy on United’s website in the
 3 State of Connecticut.” (*See* Compl. ¶¶ 4, 55, 67, 83, 98.) As set forth below, Salmons’s claims,
 4 and the claims of the members of the putative Connecticut class, lack the minimum contacts with
 5 this forum necessary for this Court to exercise personal jurisdiction over United, and those claims
 6 must therefore be dismissed pursuant to Federal Rule 12(b)(2).

7 **A. Legal Standard**

8 Federal Rule 12(b)(2) requires dismissal of an action when the court lack personal
 9 jurisdiction over the defendant. If a defendant challenges the existence of personal jurisdiction,
 10 the plaintiff bears the burden of establishing the district court’s jurisdiction over the defendant.
 11 *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011).

12 A district court sitting in diversity applies the law of the forum state in determining
 13 whether personal jurisdiction is proper. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015)
 14 (citing *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014)). The California long-arm statute
 15 provides that its reach is coextensive with the limits placed on the states by the U.S. Constitution.
 16 Cal. Code Civ. Proc. § 410.10 (“A court of this state may exercise jurisdiction on any basis not
 17 inconsistent with the Constitution of this state or of the United States.”). Therefore, whether
 18 United is susceptible to jurisdiction in California turns on whether the requirements of the
 19 Constitution’s Due Process Clause are satisfied. *Picot*, 780 F.3d at 1211.

20 To satisfy due process, a defendant must have certain “minimum contacts” with the forum
 21 state “such that the maintenance of the suit does not offend ‘traditional notions of fair play and
 22 substantial justice.’” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945)).
 23 The minimum contacts requirement “protects the defendant against the burdens of litigating in a
 24 distant and inconvenient forum” by requiring that the “defendant’s conduct and connection with
 25 the forum State [be] such that [a defendant] should reasonably anticipate being haled into court
 26 there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92, 297 (1980) (citations
 27 omitted).

28 Personal jurisdiction can exist in one of two forms: specific jurisdiction or general

jurisdiction. *Bristol-Myers*, 137 S. Ct. at 1779-80. General jurisdiction applies where the defendant's contacts with the forum are "continuous and systematic" but are not related to the plaintiff's cause of action. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). "The standard for general jurisdiction 'is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.'" *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1224 (9th Cir. 2011) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004)). A court has general jurisdiction over a corporate defendant only in the state (or states) where that defendant is "at home"—that is, in the state or states where it is incorporated and/or has its principal place of business. *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014). United is incorporated in Delaware and has its principal place of business in Illinois. See *Khoury v. United Airlines, Inc.*, 32 F. App'x 318, 319 (9th Cir. 2002). Therefore, United is subject to general jurisdiction only in Delaware and Illinois, not California.

Specific jurisdiction, on the other hand, requires that the suit "arise out of or relate to the defendant's contacts with the *forum*." *Bristol-Myers*, 137 S. Ct. at 1780 (emphasis in original). As the Ninth Circuit has stated, whether a court may assert specific jurisdiction over a nonresident defendant "focuses on the relationship among the defendant, the forum, and the litigation." *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quotation and citation omitted). "[T]he defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* (quotation and citation omitted). Three requirements must be met: "(1) the defendant must either purposefully direct his activities toward the forum or purposefully avail himself of the privileges of conducting activities in the forum; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable." *Id.* (quotation and citations omitted).

B. The Claims of Salmons and the Putative Connecticut Class Lack the Minimum Contacts With this Forum Necessary for the Court to Exercise Jurisdiction Over United

This case concerns the second, relatedness requirement, which ensures that "specific

jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” *Bristol-Myers*, 137 S. Ct. at 1780 (internal quotation marks omitted). This requirement is plainly not met with regard to Salmons or the members of the putative Connecticut class. There are no allegations that Salmons purchased her travel insurance policy in California, saw language on United’s website while in California, or suffered any injury in California. In short, there are no allegations that Salmons’s claims relate to this forum in any way. To the contrary, by seeking to represent a putative class of persons who purchased insurance policies through United’s website “in the State of Connecticut,” Salmons effectively alleges that the transaction on which she bases her claims and the claims of the putative Connecticut class took place in Connecticut, not California. (*See* Compl. ¶¶ 4, 55, 83.)

In *Bristol-Myers*, the Supreme Court considered a mass tort action in which 592 of the 678 plaintiffs had no connections with the forum state other than the fact that their claims were “similar in several ways” to the claims of the resident plaintiffs. 137 S. Ct. at 1778, 1779. The Supreme Court rejected the state court’s assertion of jurisdiction over the nonresident plaintiffs’ claims, holding that it would be unfair to require the defendant to appear in the forum to answer the nonresident plaintiffs’ claims because constitutional due process requires “a connection between the forum and the *specific claims at issue*.” *Id.* at 1781 (emphasis added). The Court found that the defendant’s due process rights would be violated through an exercise of personal jurisdiction over it with respect to nonresidents’ claims based on injuries outside the forum. *Id.* at 1780-84. “This remains true,” the Court explained, “even when third parties ... can bring claims similar to those brought by the nonresidents.” *Id.* at 1781.

The fact that Salmons seeks to represent a class does not lead to a different result. Numerous district courts have found that the holding of *Bristol-Myers* applies to a nonresident named plaintiff in a putative class action seeking to assert claims against a nonresident defendant based on alleged injuries occurring outside the forum. *See, e.g., In re Samsung Galaxy Smartphone Mktg. and Sales Practices Litig.*, No. 16-cv-06391-BLF, 2018 WL 1576457, at *2 (N.D. Cal. March 30, 2018); *Hickman v. TL Transp., LLC*, 317 F. Supp. 3d 890, 898-99 (E.D. Pa. July 12, 2018); *Horowitz v. AT&T Inc.*, No. 3:17-cv-4827-BRM(LHG), 2018 WL 1942525, *13-

16 (D.N.J. Apr. 25, 2018); *Greene v. Mizuho Bank, Ltd.*, 289 F. Supp. 3d 870, 874 (N.D. Ill. Dec. 11, 2017)). Because the claims asserted by Salmons on behalf of herself and a putative Connecticut class do not have a sufficient connection to this forum to meet the constitutional requirements of due process, the Court does not have personal jurisdiction over United to adjudicate those claims, and they must therefore be dismissed.

6 **III. THIS COURT LACKS JURISDICTION OVER THE ASSERTED CLAIMS OF** 7 **NON-RESIDENT MEMBERS OF THE PUTATIVE NATIONWIDE CLASS**

8 In addition to the claims that each Plaintiff seeks to assert on behalf of a single-state class
9 (California for Vallarta and Connecticut for Salmons), both Plaintiffs seek to assert claims for
10 unjust enrichment, conversion and fraudulent concealment on behalf of a putative nationwide
11 class. (*See* Compl. ¶¶ 66-72, 93-96, 97-107.) Because this Court does not have personal
12 jurisdiction over United with respect to claims that do not have a sufficient connection to this
13 forum—*i.e.*, the claims of persons who purchased a travel insurance policy on United’s website in
14 a state other than California—the Court should strike the nationwide class allegations from the
15 Class Action Complaint.

16 As discussed above, the Supreme Court held in *Bristol-Myers* that, to assert personal
17 jurisdiction over an out-of-state defendant to adjudicate multiple plaintiffs’ claims, the necessary
18 minimum contacts must exist not just for *some* plaintiffs’ claims, but for *every* plaintiff’s claim.
19 The Supreme Court found that the defendant’s due process rights would be violated through an
20 exercise of personal jurisdiction over it with respect to nonresidents’ claims based on injuries
21 outside the forum. *Id.* at 1780-84. “This remains true,” the Court explained, “even when third
22 parties ... can bring claims similar to those brought by the nonresidents.” *Id.* at 1781.

23 Although *Bristol-Myers* was a mass action, its fundamental holding is equally applicable
24 to the claims that Plaintiffs here seek to assert on behalf of a putative nationwide class. The Due
25 Process Clause does not and should not afford a defendant different protections depending on
26 whether the individual asserting a claim is a named plaintiff or an absent member of a putative
27 nationwide class. A Rule 23 class action is simply a procedural device that “enables a federal
28 court to adjudicate claims of multiple parties at once, instead of in separate suits.” *Shady Grove*

1 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality opinion).

2 Pursuant to the Rules Enabling Act, Rule 23 may not be used to alter substantive rights.

3 Therefore, plaintiffs cannot use the class-action procedural device to make an end-run around the
 4 due process constraints on specific personal jurisdiction. *See Wal-Mart Stores, Inc. v. Dukes*, 564
 5 U.S. 338, 367 (2011) (enforcing the Rules Enabling Act’s command in the class-action context by
 6 refusing to permit class certification that would prevent the defendant from litigating a statutory
 7 defense to individual claims); 2 Newberg on Class Actions § 6:26 (5th ed.) (“If the class prevails
 8 in the case, the goal is a binding judgment over the defendant as to the claims of the entire
 9 nationwide class,” which “triggers a defendant’s right to *class-wide due process*, that is, its right
 10 to ensure the requisite territorial connection between it and the court as to the full scope of its
 11 liability.”) (emphasis added).

12 Thus, as one district court explained, “[t]he Supreme Court held in *Bristol-Myers* that the
 13 Fourteenth Amendment’s due process clause precludes nonresident plaintiffs injured outside the
 14 forum from aggregating their claims with an in-forum resident. Under the Rules Enabling Act, a
 15 defendant’s due process interest should be the same in the class context.” *Practice Mgmt.*
 16 *Support Servs., Inc. v. Cirque du Soleil, Inc.*, 301 F. Supp. 3d 840, 861 (N.D. Ill. 2018) (citation
 17 omitted). Following this reasoning, numerous district courts have recognized since *Bristol-Myers*
 18 that “the Due Process Clause of the Fourteenth Amendment precludes the exercise of personal
 19 jurisdiction over a defendant in a putative class action where nonresident, absent members seek to
 20 aggregate their claims with an in-forum resident, even though the defendant allegedly injured the
 21 nonresidents outside of the forum.” *Mussat v. IQVIA Inc.*, No. 17 C 8841, 2018 WL 5311903, at
 22 *3, *6 (N.D. Ill. Oct. 26, 2018) (holding that Rules Enabling Act requires “consistent and uniform
 23 application of defendants’ due process rights” between “class actions under Rule 23” and
 24 “individual or mass actions”).³ Applying that principle to the circumstances presented here, it is

25
 26 ³ *See also, e.g., Leppert v. Champion Petfoods USA Inc.*, No. 18 C 4347, 2019 WL 216616, at *4
 27 (N.D. Ill. Jan. 16, 2019); *Maclin v. Reliable Reports of Texas, Inc.*, 314 F. Supp. 3d 845, 849
 28 (N.D. Ohio 2018); *McDonnell v. Nature’s Way Prods., LLC*, No. 16 C 5011, 2017 WL 4864910,
 at *4 (N.D. Ill. Oct. 26, 2017); *In re Dental Supplies Antitrust Litig.*, No. 16 Civ. 696, 2017 WL
 4217115, at *9 (E.D.N.Y. Sept. 20, 2017).

1 apparent that this Court cannot exercise specific personal jurisdiction over United with respect to
 2 the claims of the putative nationwide class.⁴ Those putative class members who are residents of a
 3 state other than California do not have claims that arise out of United’s activities in California,
 4 and it is therefore a violation of United’s due process rights for this Court to assert personal
 5 jurisdiction over United for purposes of litigating those plaintiffs’ claims. The Court should
 6 therefore strike the nationwide class allegations from the Class Action Complaint.

7 **IV. THE COMPLAINT DOES NOT PLEAD ANY COGNIZABLE CLAIM BY**
 8 **SALMONS**

9 Separate and apart from the question of this Court’s jurisdiction, the Class Action
 10 Complaint fails to sufficiently plead any claim by Salmons. For that additional and independent
 11 reason, Salmons’s claims should be dismissed.

12 **A. Salmons Fails to State a CUTPA Claim**

13 To state a claim under CUTPA (*see* Class Action Complaint, Third Cause of Action),
 14 Salmons must plausibly allege that United “engage[d] in unfair methods of competition and
 15 unfair deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat.
 16 § 42-110b (a). She must also plausibly allege that she suffered an “ascertainable loss of money or
 17 property” as a result of United’s prohibited act or practice. Conn. Gen. Stat. § 42-110g(a). The
 18 Third Cause of Action should be dismissed because the conduct alleged by Salmons, assuming it
 19 occurred, would not violate Connecticut law, and because Salmons fails sufficiently to allege that
 20 she suffered an ascertainable loss under CUTPA.

21 **1. Salmons Fails to Allege an Unfair or Deceptive Act or Practice**

22 Salmons’s CUTPA claim, like Vallarta’s UCL claim, is premised on the theory that
 23 United violates state insurance laws by receiving payments from insurance carriers that offer

24 ⁴ Although district courts have almost uniformly agreed that the holding of *Bristol-Myers* applies
 25 to class actions where the defendant allegedly injured the named plaintiff outside the forum (*see*,
 26 *e.g.*, *Hickman*, 317 F. Supp. 3d at 898-99; *Horowitz*, 2018 WL 1942525, at *13-16; *Greene*, 289
 27 F. Supp. 3d at 874), courts have disagreed about whether *Bristol-Myers* controls in class actions
 28 beyond the named plaintiff situation. *See, e.g.*, *Gress v. Freedom Mortg. Corp.*, 386 F. Supp. 3d
 455, 464 (M.D. Pa. 2019). No federal appellate court has yet decided the issue, although it is
 currently pending before the D.C. Circuit in a case in which oral argument was held on
 September 25, 2019. *See Molock v. Whole Foods Mkt., Inc.*, Case No. 18-7162 (D.C. Cir.), Dkt.
 # 1807990.

1 travel insurance to United’s customers through United’s website. (*See* Compl. ¶¶ 84-85.) The
 2 Connecticut Supreme Court has recognized, however, that the Connecticut Unfair Insurance
 3 Trade Practices Act (“CUIPA”) “provides the exclusive and comprehensive source of public
 4 policy with respect to general insurance practices” in Connecticut and that, as a result, “unless an
 5 insurance related practice violates CUIPA,” it generally cannot support a claim under CUTPA.
 6 *State of Connecticut v. Acordia, Inc.*, 73 A.2d 711, 732 (Conn. 2013). Salmons does not allege,
 7 and cannot allege, the United has violated the CUIPA. And while the *Acordia* Court noted that an
 8 insurance related practice that allegedly violates “some other statute regulating a specific type of
 9 insurance related conduct” might “arguably” support a CUTPA violation, United has found no
 10 case finding a CUTPA violation based on an alleged violation of the licensing provisions on
 11 which Salmons’s claim relies.

12 Moreover, Connecticut law, like California law, expressly *permits* airlines and other travel
 13 retailers to “receive compensation from a limited lines travel insurance producer or the insurance
 14 company issuing a travel insurance policy for services related to the offer and dissemination of
 15 travel insurance as agreed to by such designated travel retailer and such limited lines travel
 16 insurance producer....” Conn. Gen. Stat. § 38a-398(c)(1)(3). Those statutory provisions—
 17 adopted by the Connecticut General Assembly on June 7, 2017 and signed by the Governor on
 18 July 10, 2017⁵—establish that the alleged practice on which Salmons purports to base her
 19 CUTPA claim does not “offend,” but rather is consistent with, the public policy of the state of
 20 Connecticut. *See Acordia, Inc.*, 73 A.2d at 732 (observing that whether a business practice
 21 violates CUTPA depends on whether the practice “offends public policy”) (internal quotation
 22 marks omitted).

23 Finally, CUTPA itself expressly exempts from its application “[t]ransactions or actions
 24 otherwise permitted under law as administered by any regulatory board or officer acting under
 25 statutory authority of the state or of the United States.” Conn. Gen. Stat. § 42-110c. The alleged
 26

27 ⁵ *See*
 28 https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=7024&which_year=2017

conduct by United that Salmons challenges is both permitted by law as noted above, and regulated by the Connecticut Insurance Commissioner. *See, e.g.,* Conn. Gen. Stat. § 38a-398(b)(1)(A). Consequently, Salmons cannot state a CUTPA claim and the Class Action Complaint’s Third Cause of Action must be dismissed. *See, e.g., Wind Corporation v. Wesko Locks, Ltd.*, No. 3:18-cv-292(AWT), 2018 WL 8729585, at * 4-5 (D. Conn. Aug. 24, 2018) (dismissing CUTPA claim because the transactions at issue were permitted and otherwise regulated by statute, and therefore fell within the exception in Section 42-110c(a)(1)).

2. Salmons Fails to Allege an Ascertainable Loss as a Result of the Alleged Practice

In addition, Salmons fails to state a CUTPA claim because her allegations are devoid of facts showing that she suffered an ascertainable loss as a result of the alleged conduct she challenges. The ascertainable loss element is “a threshold barrier which limits the class of persons who may bring a CUTPA action seeking either actual damages or equitable relief.” *Larobina v. Wells Fargo Bank, N.A.*, No. 3:10-cv-01279 (MPS), 2014 WL 3419534, at *1 (D. Conn. July 10, 2014) (internal quotation marks omitted). “Thus, to be entitled to any relief under CUTPA, a plaintiff must first prove that he has suffered an ascertainable loss due to a CUTPA violation.” *Id.* (internal quotation marks omitted). An “ascertainable loss” is a deprivation, detriment or injury that is ‘capable of being discovered, observed or established.’” *Id.* (quoting *Marinos v. Poirot*, 66 A.3d 860, 866 (Conn. 2013)).

Rather than setting forth facts that would establish such a loss, Salmons relies on conclusory and hypothetical allegations about the supposed availability of cheaper insurance. (See Compl. ¶ 42.) Salmons does not, however, allege that the insurance policy she received was in any way different from the policy for which she had bargained. *Contra Hinchliffe v. American Motors Corp.*, 440 A.2d 810, 814 (Conn. 1981) (holding that a plaintiff satisfies the “ascertainable loss” requirement when he proves “that he has purchased an item partially as a result of an unfair or deceptive practice or act and that the item is different from that for which he bargained”). Nor does she plausibly allege that her purchase of a travel insurance policy was “a result of” United’s nondisclosure of the alleged fact that it receives compensation from third

1 parties who market their products on its website. For this reason as well, Salmons's CUTPA
2 claim should be dismissed.

3 **B. Salmons Fails to State a Claim for Unjust Enrichment.**

4 In Connecticut, the success of an unjust enrichment cause of action is dependent upon
5 whether (1) the defendant was benefited, (2) the defendant unjustly failed to pay the plaintiff for
6 the benefits, and (3) the failure of payment was to the plaintiff's detriment. *Gagne v. Vaccaro*,
7 766 A.2d 416, 428 (Conn. 2001). In this case, Salmons has not identified a specific "benefit" that
8 United has retained to her detriment. Salmons does not identify what specific loss she incurred as
9 a result of her purchase of the trip insurance, or any nexus between that alleged loss and any
10 alleged benefit retained by United. Salmons does not allege that the travel insurance policy she
11 received was somehow deficient or worth less than what she paid. And even if she were to claim
12 that the "benefit" that United received was the alleged commission paid by the third-party insurer
13 to United, she fails to plausibly allege that United's retention of that "benefit" is inequitable given
14 that Connecticut law expressly allows United to receive such compensation. Without allegations
15 plausibly connecting some sort of ill-gotten benefit to an alleged detriment to Salmons, her unjust
16 enrichment claim must fail.

17 **C. Salmons Fails to State a Claim for Conversion**

18 Salmons's claim for conversion also fails, as she does not "point to specific, identifiable
19 money to which [she] had a right of possession." *Macomber v. Travelers Property and Cas.*
20 *Corp.*, 804 A.2d 180, 200 (Conn. 2002). In Connecticut, conversion is "an unauthorized
21 assumption and exercise of the right of ownership over property belonging to another, to the
22 exclusion of the owner's right." *Mystic Color Lab, Inc. v. Auctions Worldwide LLC*, 934 A.2d
23 227, 234 (Conn. 2007).

24 Salmons's conclusory allegations in Count IV do not pass muster under federal pleading
25 standards, as she is silent on the required temporal aspect of conversion. (Compl. ¶¶ 94-96; Fed.
26 R. Civ. P. 12(b)(6).) Although money can be subject to conversion—a cause of action that is akin
27 to theft in Connecticut—a plaintiff must still establish "*legal ownership or right to possession of*
28 *specifically identifiable moneys...[that] at all times belonged to the plaintiff.*" *Deming v.*

1 *Nationwide Mutual Ins. Co.*, 905 A.2d 623, 640 (2006) (emphasis in original). Salmons does not
 2 allege that she had an identifiable ownership right to the funds she paid for her travel insurance
 3 policy after she tendered that payment to the insurance carrier (not United). She also does not
 4 identify specific monies United allegedly “converted to [its] own use”; at most, she appears to be
 5 seeking the unspecified difference between what she paid for her policy and what she allegedly
 6 could have paid for some other, hypothetical travel insurance policy. (Compl. ¶ 41.) Salmons’s
 7 conversion claim should accordingly be dismissed. *See Deming*, 905 A.2d at 640.

8 **D. Salmons Fails to State a Claim for Fraudulent Concealment**

9 Fraudulent concealment is not an independent cause of action under Connecticut law.
 10 *McCullough v. World Wrestling Entertainment, Inc.*, 172 F.Supp.3d 528, 560 (D. Conn. 2016)
 11 (“WWE is correct that fraudulent concealment is not a separate cause of action.”) (collecting
 12 cases). Rather, fraudulent concealment is primarily utilized to toll a statute of limitations, which
 13 Salmons has not raised as an issue in this case. *Carson v. Allianz Life Ins. Co. of North America*,
 14 194 A.3d 1214, 1220-21 (Conn. Ct. App. 2018). Salmons’s fraudulent concealment claim should
 15 therefore be dismissed.

16 **V. THE AIRLINE DEREGULATION ACT PREEMPTS PLAINTIFFS’ CLAIMS**

17 Congress enacted the ADA to, among other things, promote “efficiency, innovation, and
 18 low prices” in the airline industry through “maximum reliance on competitive market forces and
 19 on actual and potential competition” rather than regulation. 49 U.S.C. § 40101(a)(6), (a)(12). To
 20 “prevent the States from undoing what the [ADA] was meant to accomplish,” *Northwest, Inc. v.*
 21 *Ginsberg*, 572 U.S. 273, 283 (2014), Congress included in the ADA a broad preemption
 22 provision. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-79, 383 (1992).

23 The ADA preempts state-law claims that are “related to” – that is, those that have “a
 24 connection with, or reference to” – an airline’s prices, routes, or services. *Ginsberg*, 572 U.S. at
 25 284 (citation omitted); *see also Morales*, 504 U.S. at 383 (stating that the ADA expresses a broad
 26 pre-emptive purpose that prevent litigants from asserting claims against an airline related to the
 27 airline’s prices, routes or services). The Supreme Court has recognized only a single, narrow
 28

1 exception to ADA preemption: the ADA does not preempt breach of contract claims that seek
 2 only to enforce the airline's own promise, "with no enlargement or enhancement based on state
 3 laws or policies external to the agreement." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232-33
 4 (1995). Thus, unless they fall within the limited *Wolens* exception, matters related to an airline's
 5 prices, routes, or services are left to regulation by the United States Department of Transportation
 6 ("DOT") and to market forces. *Morales*, 504 U.S. at 390-91.

7 The types of claims asserted by Plaintiffs here are plainly outside the scope of the *Wolens*
 8 exception. *See, e.g., Wolens*, 513 U.S. at 227-28 (ADA preempts consumer fraud act claims);
 9 *Sanchez v. Aerovias De Mexico, S.A. De C.V.*, 590 F.3d 1027, 1030-31 (9th Cir. 2010) (putative
 10 class claims asserting breach of implied covenant of good faith and fair dealing, unjust
 11 enrichment, and money had and received preempted by the ADA); *Alaska Airlines Inc. v. Carey*,
 12 395 F. App'x 476, 478 (9th Cir. 2010) (counterclaims asserting fraud and other related state law
 13 claims preempted by the ADA); *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 696-97 (9th Cir.
 14 2011) (putative class claims based on California state unfair competition and unfair business
 15 practices laws preempted by the ADA); *Banga v. Gundumolgula*, No. 2:13-CV-00667-MCE,
 16 2013 WL 3804046, at *3 (E.D. Cal. July 19, 2013) (dismissing UCL-based claims as preempted
 17 by the ADA, finding that challenges relating to a refund policy and fee waivers are part of the
 18 reservations and ticketing process, and that "[u]nfair business practice laws, such as UCL, have
 19 consistently been found preempted by the ADA"), *report and recommendation adopted*, No.
 20 213CV0667MCDCKDPS, 2013 WL 11332786 (E.D. Cal. Sept. 12, 2013); *Rivera v. JetBlue*
 21 *Airways Corp.*, No. 3:17-CV-00960, 2018 WL 264735, at *2 (D. Conn. Jan. 2, 2018) (CUTPA
 22 claims preempted by the ADA); *Brown v. United Airlines, Inc.*, 720 F.3d 60, 70-71 (1st Cir.
 23 2013) (ADA preempts unjust enrichment claims); *Levitt v. Sw. Airlines Co.*, 846 F. Supp. 2d 956,
 24 960 (N.D. Ill. 2012) (same).

25 Furthermore, Plaintiffs' own allegations closely tie the offering of travel insurance to
 26 United's customers through its website to both the fees that United charges for changing or
 27 cancelling a flight and the flight booking and ticketing process. (*See, e.g., Compl.* ¶¶ 11, 13, 17-
 28 20, 27, 35.) Plaintiffs' claims challenging that alleged activity thus clearly relate to both United's

prices and its services. *See Arapahoe Cty. Pub. Airport Auth. v. F.A.A.*, 242 F.3d 1213, 1222 (10th Cir. 2001) (identifying “ticketing” as a service under the ADA); *Bower v. Egyptair Airlines Co.*, 731 F.3d 85, 94 (1st Cir. 2013) (holding that airline ticketing is a service under the ADA); *Shrem v. Sw. Airlines Co.*, No. 15-cv-04567-HSG, 2016 WL 4170462, at *3 (N.D. Cal. Aug. 8, 2016) (holding that claims challenging airline’s alleged forfeiture of passengers’ credits from previously cancelled flights were preempted); *Statland v. Am. Airlines, Inc.*, 998 F.2d 539, 541-42 (7th Cir. 1993) (holding that ADA preempted claims challenging ticket cancellation fee).

Plaintiffs’ claims are therefore preempted by the ADA and must be dismissed.

CONCLUSION

For the foregoing reasons, United respectfully requests that this Court dismiss this action in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). In the alternative, United requests that the Court dismiss the claims asserted by Salmons, on behalf of herself and a putative Connecticut class, for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), and strike Plaintiff’s allegations of a putative nationwide class.

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